U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

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PUBLIC COPY

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: JUN 23 2011 OFFICE: NEBRASKA SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research investigator at [redacted] a [redacted], Massachusetts. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on September 2, 2008. The petitioner's initial submission included seven witness letters. Counsel labeled four of these letters "Independent advisory opinion[s]," but the record refutes this claim. One supposedly independent letter is from [redacted] a research team leader at [redacted] and the petitioner were classmates at [redacted] from 1988 to 1992. [redacted] stated:

> I know [the petitioner] since he attended the [redacted] quarterly meeting in Boston. He was one of few with expertise of transporters in the area of drug metabolism and pharmacokinetics. . . .
>
> At [redacted] University, [the petitioner] pursued several areas of research that provided him with a unique advantage in a career in the pharmacology/biotechnology industry. . . . [His] experience with government regulatory agency and solid training in both statistics and pharmacological science make [the petitioner] extremely valuable in the pharmaceutical industry.
>
> Not surprisingly, [the petitioner] soon became an indispensable member of [redacted] and the pharmaceutical industry. Shortly after he was recruited to the company, [the petitioner] continued to stand out among his peers by generating original innovations and discoveries in several areas involving drug safety and efficacy.

Other witnesses directly involved with the petitioner's work provided further details about the petitioner's work. [redacted] is an [redacted] University [redacted], where the petitioner earned his master's and doctoral degrees between 1997 and 2003. [redacted] stated:

> Pharmacokinetics is a branch of pharmacology dedicated to the determination of the fate of substances administered externally to a living organism. . . .
>
> [The petitioner] possesses a very diverse and unique experience and advanced knowledge in pharmacokinetics, biopharmaceutics, drug metabolism, drug transport in addition to statistics. He excelled above his peers in his academics as well in his highly productive research results. He was critical to my research program as all of the data he generated were critical for my [redacted] research proposals to be funded. In particular, he provided valuable assistance in the development of a drug transport model, experimental design, data acquisition and data analysis as well as in drafting the methodology sections [of] the grant proposals. . . .
>
> As an example, I want to emphasize [the petitioner's] contributions to investigating drug-drug and drug-diet interactions. In particular, he helped design the intestinal drug transport model, Caco-2 cell permeability model in order to study drug-diet interactions, which usually occur during drug absorption stage. . . . In an original study of its kind, [the petitioner] successfully established the Caco-2 cell permeability model in predicting oral absorption of cimetidine, a drug intended to treat heartburn and ulcers. In addition, [the petitioner] found that dietary components called flavonoids (found in tea, wine, citrus, dark chocolate) can affect the transport of cimetidine by inhibiting transporters in Caco-2 cells. Thus, he has shown that one

should be cautious to take diet supplements containing flavonoids when cimetidine is being administered to ulcer patients. . . .

Even before obtaining his Ph.D., [the petitioner] made notable contributions at the [redacted] in the [redacted] and [redacted] He made important contributions to clinical data of hepatic diseases patients and in analyzing the statistical correlation between severity of hepatic disease and pharmacokinetics results. This contribution was used by the FDA to issue guidelines for study design in patients with impaired hepatic function.

Counsel identified [redacted] as another independent witness, but in his letter [redacted] indicates that he used to be a [redacted] during which time he worked closely with the petitioner. Indeed, the record contains a copy of an article that [redacted] and the petitioner co-authored, with two others. [redacted] stated:

I want to highlight the relationship that I have had with [the petitioner] which enables me to make some evaluative comments. In 2001, I was coordinating an innovative research program which evaluated the value of international education, broadly defined, on the intellectual development and success of undergraduate[] programs in US-based universities. . . . The more challenging part was the analysis of the data. In this regard, I came to rely highly upon [the petitioner] who offered the unique talent to statistically analyze complex data on surveys which contained biological [*sic*; he appears to mean "biographical"] and personal information. . . . [The petitioner] took our reams of data and was able to distill these effectively and identify the key aspects of undergraduate experiences which were generating impact in post-graduates' lives. . . .

[I]n his PhD program [the petitioner] coordinated a first-rate research project which assessed effects of flavonoids on cellular characteristics which influenced their ability to take up various pharmaceutical products. . . . At [redacted] [the petitioner] has carried-out a wide spectrum of projects and analytical procedures which include assessment of transport function, development of analytical methods to assess cell function . . . , novel drug development and evaluation. . . . [H]is expertise in Statistics has also helped the company make solid inferences on the value of the data and to prepare reports for US government agencies concerning drug delivery efficacy. . . .

[The petitioner] is an exceptional individual who offers the United States the rare combination of graduate training in both Statistics and Biological Sciences. . . . In this regard, he is truly a unique individual; one we should strive to retain.

Another witness who worked with the petitioner at [redacted] now [redacted] and [redacted]. [redacted] stated that

she and the petitioner "both worked in the same lab for more than five years." She discussed the petitioner's flavonoid research in technical detail, and stated that his current work at [redacted] "will be key reference[s] in response to FDA's concern on the safety of E7389," an experimental drug. [redacted] asserted: "I believe that waiver of this labor certification is warranted since to my knowledge there are no other individual[s] with the same minimum qualifications who can perform the necessary work." The purpose of labor certification, however, is to demonstrate that no other qualified workers are available. Therefore, if [redacted] claim is true, then labor certification should be readily available to the petitioner.

Counsel identified [redacted] at the [redacted] of [redacted] as an independent witness, but [redacted] was a [redacted] from 2004 to 2006. She stated: "I have known [the petitioner] for two years. I knew his name when I was doing my research at [redacted] University." [redacted] echoed other witnesses' claims that the petitioner's double expertise in pharmaceutical sciences and statistics "is very rare," and that the petitioner has made "indispensable" contributions to various research projects at [redacted] claimed that the petitioner's "work at [redacted] alone, has already improved the health of millions of Americans in the U.S. by improving pharmaceutical research and clinical trial protocols, by reducing the costs of drug development, and making promising drug candidates available to the market." [redacted] did not explain or demonstrate how the benefits from the petitioner's work have percolated through the pharmaceutical industry to such an extent that it "has already improved the health of millions of Americans," rather than simply having the potential to do so in the future.

Counsel referred to [redacted] as one of the four initial independent witnesses. [redacted] however, is a [redacted]. [redacted] "did not work with [the petitioner] directly," but referred to "collaborations in the drug discovery projects with [the petitioner] in the past 5 years." [redacted] group "turned to [the petitioner] for help" when problems arose with studies of a particular drug candidate:

> One leading chemical molecule that we identified demonstrated great potential of immobilizing immune cells that support the m[e]tastasis of cancer cells. However, animal pharmacokinetics studies showed that the candidate had poor oral absorption and that we had no clear solution on how to improve it in this regard. When we turned to [the petitioner] for help, he quickly identified that the *permeability* of the drug candidate was the key issue for poor oral absorption. . . . Furthermore, [the petitioner] took another step by clearly demonstrating that the poor permeability of the drug candidate was mainly due to an efflux transporter called P-glycoprotein (P-gp, a protein that pumps drugs out of a cell). . . . The insights provided by [the petitioner] presented a clear direction for the project team to optimize the chemical structure of [a] drug candidate with better pharmacokinetics profiles. The application of [the petitioner's] methods will accelerate the drug discovery efforts for anti-cancer drugs (and its impact on cancer biology and immunology) and thus benefit the national interest of the United States.

> [The petitioner] also applied his transporter expertise to many other high profile projects. For instance, E7389 . . . exhibits potent growth inhibiting activity *in vitro* against numerous human cancer cell lines as well as human tumor xenografts. E7389 is currently in phase III clinical trials for treating cancers. One of the questions raised by the US FDA is how likely E7389 interacts with P-gp that recognizes many drugs as substrates. Because cancer patients usually take a plethora of drugs during treatments, it is absolutely necessary to understand whether E7389 will be interacted [*sic*] with P-gp and cause adverse effects, before it is administered in human. Failing to do so may cause unpredictable side effects, which will put patients in even greater danger rather than rescuing them from cancer. For this purpose, [the petitioner] designed several sophisticated *in vitro* studies, and was the first one to demonstrate that E7389 is a weak P-gp inhibitor and not likely to cause P-gp-mediated drug-drug interactions in human. His discoveries convinced FDA that no further clinical study was required to address the P-gp issue of E7389. It was evident that [the petitioner's] discoveries not only significantly saved [redacted] vast resources for unnecessary clinical trials, but also provided more confidence and safer regimen for cancer patients in the United States when taking E7389.
>
> . . . He also played an important role in improving denileukin difitox (brand name: ONTAK) . . . , approved by FDA to treat cutaneous T-cell lymphomas (CTCL). ONTAK has been approved for more than 10 years and been effective to treat various cancers. However, vascular leak syndrome (VLS), a side effect of ONTAK, greatly limits the dose administration. . . . [The petitioner] was the first scientist to demonstrate that VLS caused by ONTAK can be observed in an in vitro model. Because of his innovative approach, now [redacted] can utilize the system to improve ONTAK with no VLS. Such an achievement can only be done by a person with in-depth knowledge of macromolecule therapeutics.

[redacted], now [redacted] California, previously worked at [redacted] with the petitioner. [redacted] stated that the petitioner's Caco-2 cell permeability model "soon become a standard assay applied to most [redacted] projects in predicting intestinal permeability." [redacted] also stated that the petitioner "developed the single-pass *in situ* perfusion model to investigate drug absorption in rats. His system provides more accurate information in intestinal absorption than animal pharmacokinetic studies while at the same time, using only minimal numbers of animals." [redacted] also stated that the petitioner's expertise in transporters "not only helped quickly advance ongoing projects, but also provided new research directions."

The AAO has taken all of the letters into consideration, but these letters represent the perspectives of classmates, mentors, and co-workers. The letters illustrate the nature of the petitioner's contributions, but do not establish the wider impact of his work. For that, the AAO turns to the objective evidence in the record.

The petitioner's *curriculum vitae* listed four "publications," but indicated that only one of the listed papers had actually been published. Two others were "in preparation" and a third had been submitted to a journal, but not yet published. The petitioner, to qualify for the waiver, must establish existing influence and impact; it cannot suffice to claim that forthcoming publications have poised him to have such impact in the imminent future. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). Therefore, subsequent events cannot cause a previously ineligible alien to become eligible after the filing date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

The petitioner submitted abstracts of four conference presentations from between 1999 and 2003, but no evidence of his continued participation in those gatherings. Most of the petitioner's recent writings have been in the form of study reports.

The exhibit list that accompanied the petition listed eight exhibits (28 through 35) under the heading "Citations." Most of the exhibits, however, are beyond even the most strained definition of the term "citations." Some of the "citation" exhibits are not even scholarly articles at all, and contain no citations of any kind. Only two of the eight exhibits appear to mention the petitioner by name. Exhibit 28 is an article that includes a citation to what was, at the time, the petitioner's only published article. Neither the petitioner's article nor the citing article have anything to do with pharmacology. Rather, a citation of "Internationalization of the animal science undergraduate curriculum" appeared in an article entitled "Major Advances in Teaching Dairy Production." [redacted] was the principal author of the cited article.

Exhibit 29 is another article, but it contains no citation to the petitioner's work. Instead, the "Acknowledgments" section at the end of the article includes an expression of thanks to the petitioner and two others "for providing Caco-2 cells" to the authors (who are [redacted] researchers, including [redacted]. Counsel claimed that the remaining six exhibits marked as "citations" each showed the petitioner's influence in some way, but counsel pointed to no evidence to support that claim. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In this instance, counsel's credibility is particularly suspect because of demonstrably false claims, such as the assertion that the petitioner's longtime collaborator and coauthor is an independent witness.

On August 14, 2009, the director issued a request for evidence, instructing the petitioner to submit additional documentary evidence establishing the significance and impact of his past work. In response, counsel observed that the petitioner only recently received his doctoral degree, and therefore "should not be compared with a U.S. worker who has many years research experience." Counsel offered no explanation for this arbitrary limitation, which implies that it should be easier for a newly-minted researcher to receive a national interest waiver than an experienced researcher.

The petitioner's response included four more letters that counsel labeled "Independent Expert Opinion[s]." The first such letter is from [redacted], who worked at [redacted] for nearly ten years before becoming a [redacted] stated "I never worked or collaborated with" the petitioner, but in the same paragraph indicated that the petitioner "served as the drug metabolism and pharmacokinetics . . . representative to our lupus project team." [redacted] described the petitioner's recent work in technical detail, and claimed that the petitioner's "achievements in pharmaceutical sciences are significant and outstanding, and have positively impacted US public health, particularly in the area of new drug development, at a level substantially greater than his peers." Most of the projects described appear in the record here for the first time, the petitioner not having mentioned them in the initial submission. For reasons already explained, projects that the petitioner undertook after the filing date cannot retroactively demonstrate eligibility as of the filing date.

The remaining witnesses are all researchers who, like the petitioner, work in or near [redacted] "consulted with [the petitioner] about setting up a new *in vitro* model to study drug permeability." [redacted] claimed that the petitioner "and his work are widely recognized in the field of transporters, especially for P-glycoprotein (P-gp)," but in discussing the issue in question, [redacted] referred to not-yet-published work that the petitioner had performed in 2009, after the filing date.

[redacted] stated:

> I . . . first became acquainted with [the petitioner] at a [redacted] Meeting six years ago when I studied Alzheimer disease at [redacted] Since then, based on his comprehensive expertise, I looked to [the petitioner] to provide his expertise in pharmacokinetics and drug delivery for some cases. . . . To analyze complicated human tissue data, I needed advanced statistical tools. [The petitioner] provided valuable statistic advices to improve the reliability of my studies. . . . The paper detailing these findings is currently under preparation for submission to *Nature Medicine*.
>
> I have a deep understanding of [the petitioner's] numerous achievements on the Caco-2 cell model, E7389 project, and ONTAK project. Those achievements are remarkable and have refined the industry's knowledge of drug screening and discovery.

[redacted] claimed that the petitioner's "actual contributions to the industry are far more than what has been revealed in his published papers and impact the United States healthcare and pharmaceutical economy profoundly," but that "business confidentiality reasons" prevent disclosure of much of the petitioner's work. Because the AAO must rely on the evidence that the petitioner chooses to submit, it cannot suffice to state that persuasive evidence exists but cannot be submitted out of consideration for confidentiality.

[redacted], stated:

> I have never worked or collaborated with [the petitioner], but have met him at the [redacted] meeting in [redacted] five years ago. I was very impressed with his extensive experience in drug transporters. . . .
>
> [The petitioner] is recognized internationally. For example, he was invited to author a review paper on the significance of drugs transporters. In this review paper published in *Chemical Monthly*, a prestigious peer-review journal in Taiwan, [the petitioner] outlined the physiological and pharmacological roles of drug transporters; discussed the transporter-mediated drug-drug interaction and drug toxicity; and provided his unique insight on the current industrial perspective on drug transporters and the trends for future researches in drug transporters. Renowned experts in a specific area are only invited to author such review articles.

The record does not contain independent evidence to show that the petitioner's review article demonstrates that he "is recognized internationally." Leaving aside the review article's publication well after the petition's filing date, an article published in the petitioner's own home country is poor evidence of "international" recognition. The record contains nothing from the publishers or editors of *Chemical Monthly* to show that the journal asks only "renowned experts" for review articles.

The opinions of experts in the field are not without weight and the AAO has considered them above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as the AAO has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

The letters considered above discuss details of the petitioner's work, but offer little verifiable evidence of how those contributions have influenced the field. The petitioner did not submit letters showing that his work has had a significant impact outside of his own employer and those who have consulted directly with the petitioner for various reasons. The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

The petitioner's second submission, like the first, included an inflated "Citations" section. Counsel stated that the petitioner's published work "has been **cited 3 times**" (emphasis in original), but the "Citations" section includes nine exhibits. Many of these exhibits are lists, containing information

about the citing authors, the journals carrying the articles, and other factors. The petitioner submitted copies of two published articles citing the petitioner's first article, "Internationalization of the animal science undergraduate curriculum," rather than the petitioner's present work in the pharmaceutical industry. The petitioner also submitted an excerpt from a Finnish student's doctoral dissertation, showing a citation of the petitioner's more recent work with flavonoids (specifically, an article published in 2009, after the petition's filing date).

Many of the other submissions appear to represent standard work product from the petitioner's occupation, rather than evidence that intrinsically sets the petitioner apart from others in that occupation.

The director denied the petition on January 28, 2010, acknowledging the intrinsic merit and national scope of the petitioner's occupation, but finding that the petitioner, with his minimal citation record, had not shown significant evidence of influence on the field. The director acknowledged the witness letters, but stated that those letters do not show the wider impact of the petitioner's work. The director also noted that the majority of the witnesses have demonstrable ties to the petitioner.

On appeal, counsel contends that the director erred by stating that only three of the witness letters were from independent witnesses, "when in fact, Petitioner/Appellant submitted a total of seven independent letters from those who have not worked with or personally know the Petitioner." As has already been explained, most of the purportedly independent witnesses not only have clear ties to the petitioner, but they discussed those ties in their own letters. Among the supposedly independent witnesses are a long-term collaborator who wrote an article with the petitioner, to which counsel has repeatedly referred, and current and former employees of the company where the petitioner now works. The alleged independence of those witnesses exists only in counsel's groundless assertions.

Counsel contends that the director erred by requiring evidence of "widespread implementation" of the petitioner's work, rather than "'some degree' of influence on the field." The wording from *Matter of New York State Dept. of Transportation* is "a past history of demonstrable achievement with some degree of influence on the field as a whole." *Id.* at 218, n.5. Influence on the field as a whole would be, by nature, widespread.

Counsel maintains that the director over-relied on citations, and failed to consider other gauges of the importance and impact of the petitioner's work. Counsel states, for example, that the director's reasoning "fails to afford due weight to 'originality' as an indication of significance." While a contribution must generally be original to be significant, it does not follow that originality is, itself, a measure of significance. An idea can be original but insignificant, or even incorrect. The absence of plagiarism and/or redundancy is not, itself, inherent evidence of the petitioner's eligibility.

Counsel contends that "some of the most original and influential contributions, such as theoretical discoveries, cannot be judged solely on citation history." It is true that citations are not always the best measure of an idea's influence or importance, but there must be some alternative measure in

that event. The petitioner cannot simply point to whatever he is able to present, and declare that to be sufficient alternative evidence of eligibility.

Counsel protests that the director did not give sufficient consideration to the petitioner's conference papers and abstracts. The record, however, says little about these materials other than to confirm their existence. Counsel does not explain why these materials show the petitioner to be eligible for the waiver; counsel simply complains that the director ignored them. At times, counsel seems to suggest that the presentation and publication of the petitioner's work is, itself, evidence of the impact of that work. Impact, however, lies not in the petitioner's work in and of itself, but in the reaction of others in the field to that work. It does not matter how many people have seen the petitioner's work, if it did not have a significant effect on their subsequent efforts.

Counsel asserts that the petitioner "established an intestinal drug transport model called the Caco-2 cell permeability model." Some witnesses have stated that Caco-2 models are widely used, but the record does not show that the petitioner is the first to develop such a model. Rather, the record indicates that the petitioner developed a particular version specifically for a particular study, but other Caco-2 models have been in use for years. The petitioner himself, in one of his manuscripts, cited a 1989 article by I.J. Hidalgo *et al.*, "Characterization of the human colon carcinoma cell line (Caco-2) as a model system for intestinal epithelial permeability." Numerous other articles in the same bibliography attest to the widespread use of Caco-2 models for permeability and drug absorption. The petitioner cannot, as counsel attempts to do, point to every recent use of Caco-2 models as evidence of his own influence on the field, because the Caco-2 model was already established decades ago.

The above discussion demonstrates that counsel bases many key arguments on appeal on claims that are demonstrably at variance with the facts in the record.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.